

Clock Electric, Inc. and International Brotherhood of Electrical Workers, Local No. 38. Cases 8–CA–26560 and 8–CA–26646

July 16, 1999

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX
AND HURTGEN

On July 14, 1997, the National Labor Relations Board issued a Decision and Order in the above-entitled proceeding.¹ The Board found that the Respondent had violated Section 8(a)(3) and (1) of the Act by refusing to hire applicants Richard J. Crumbley and James Embrescia because of their union support, and violated Section 8(a)(1) of the Act by engaging in photographic surveillance of protected concerted employee picketing. The Board ordered the Respondent to cease and desist from engaging in these unfair labor practices and to take certain affirmative action, specifically including provisions for a make-whole remedy of reinstatement and backpay for both Crumbley and Embrescia.

The Respondent subsequently filed a petition for review with the United States Court of Appeals for the Sixth Circuit, and the Board filed a cross-application for enforcement of its Order. On December 9, 1998, the court issued a decision in which it upheld the Board's findings that the Respondent committed unfair labor practices by its surveillance and by hiring Orin Lemin over Crumbley and Embrescia.² However, the court denied enforcement of the Board's Order to the extent the Board found that the Respondent discriminated on the basis of union membership when it hired Joseph Gelski instead of Crumbley or Embrescia. On February 5, 1999, the court entered its mandate and judgment remanding this case to the Board with instructions to "determine which of the two unsuccessful applicants, Richard Crumbley or James Embrescia, is to be made whole."

On May 21, 1999, the Board advised the parties that it had accepted the court's remand and invited them to file statements of position with respect to the issues raised by the remand. Thereafter, both the General Counsel and the Respondent filed statements.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has accepted the court's remand as the law of the case. Having duly considering the matter, including statements of position filed by the Respondent and the General Counsel, we find that Richard J. Crumbley is the person to whom the Respondent should offer employment and provide with backpay. The General Counsel's statement of position requests, based upon conversations and correspondence with the Respondent and the Charging Party Union, that reinstatement and backpay be

ordered for Richard Crumbley. The General Counsel states that this position reflects an agreement between the Respondent and the Union, as evidenced by letters from each, dated May 12 and June 3, 1999, respectively, which are attached to the statement of position. The Respondent's statement of position repeats this information.

The parties' requested resolution of the issue on remand is consistent with the court's opinion and presents no apparent conflict with Board law and statutory policy. We shall therefore modify our original Order in accord with the court's opinion and the parties' statements of position.

ORDER

The National Labor Relations Board modifies its Order in this proceeding, and orders that the Respondent, Clock Electric, Inc., Cleveland, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraphs 2(a) and (b):

"(a) Within 14 days from the date of this Order, offer immediate employment to Richard Crumbley at rates paid to electricians hired by the Respondent with commensurate experience; if necessary terminating the service of employees hired in his stead.

"(b) Make whole Richard Crumbley for wage and benefit losses he may have suffered by virtue of the discrimination practiced against him in the manner prescribed in the remedy section of the decision."

2. Substitute the attached notice³ for that previously issued by the Board.

APPENDIX

**NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government**

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

¹ 323 NLRB 1226 (1997).

² 162 F.3d 907 (1998).

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT photograph employees engaged in lawful protected activity.

WE WILL NOT fail or refuse to hire job applicants because of their known or suspected membership in and/or support of the International Brotherhood of Electrical Workers, Local No. 38, or any other labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed to them by Section 7 of the Act.

WE WILL, within 14 days from the date of this Order, offer immediate reinstatement to Richard Crumbley, at

rates paid to electricians hired by us with commensurate experience; if necessary, terminating the service of the employee hired in his stead.

WE WILL make Richard Crumbley whole for any wage or benefit losses he may have suffered by virtue of our unlawful failure or refusal to hire him because of his known or suspected membership in or support of Local No. 38, less any net interim earnings, plus interest.

CLOCK ELECTRIC, INC.